

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	:	Sharon Lesk, et al.	Confirmation No.:	2832
Appln. No.	:	10/725,857	Group Art Unit:	3728
Filed	:	December 1, 2003	Examiner:	B. Gehman
For	:	FLOWER CONTAINER		

**APPEAL BRIEF UNDER 37 C.F.R. § 41.37**

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Commissioner for Patents  
Post Office Box 1450  
Alexandria, VA 22313-1450

Sir :

This Appeal is from the Examiner's rejection of claims 1-3, 5, and 7-28, as set forth in the Final Official Action of March 10, 2009.

A Notice of Appeal was filed on September 8, 2009, in response to the Advisory Action dated August 31, 2009. This Appeal Brief is due on or before November 9, 2009 (November 8, 2009 being a Sunday).

The requisite fee for filing a Notice of Appeal under 37 C.F.R. § 41.20 (b)(1) was paid on September 8, 2009. The requisite fee for filing a brief in support of appeal under 37 C.F.R. § 41.20 (b)(2) is being paid concurrently with the filing of this brief. However, if for any reason the necessary fees are not associated with this file or the attached fee is inadequate, please charge Deposit Account No. 50-0337 and refer to Attorney Docket No. 7288-102/10312532.

This brief contains items under the following headings as required by 37 C.F.R.

§ 41.37 and MPEP § 1206:

1. Real Party In Interest
2. Related Appeals and Interferences
3. Status of Claims
4. Status of Amendments
5. Summary of the Claimed Subject Matter
6. Grounds of Rejection to be Reviewed on Appeal
7. Argument
8. Claims Appendix
9. Evidence Appendix
10. Related Proceedings Appendix

**(1) REAL PARTY IN INTEREST**

The real party in interest are Sharon Lesk and Katherine Keck, inventors.

**(2) RELATED APPEALS AND INTERFERENCES**

No related appeals and/or interferences are pending.

**(3) STATUS OF THE CLAIMS**

A. Total Number of Claims in Application

There are 26 claims pending in application.

B. Current status of claims

1. Claims canceled: 4, 6.
2. Claims withdrawn from consideration but not canceled: None
3. Claims pending: 1-3, 5, and 7-28
4. Claims allowed: None
5. Claims rejected: 1-3, 5, and 7-28

A copy of claims 1-3, 5, and 7-28, the rejections of which are appealed, is copied in the attached Claims Appendix.

C. Claims on Appeal

The claims on appeal are claims 1-3, 5, and 7-28, copied in the Claims Appendix.

**(4) STATUS OF THE AMENDMENTS**

On September 1, 2009, Appellant filed a response to a Notice of Non-Compliant Amendment, dated August 31, 2009 to correct a typographical error in claim 9. In the Advisory Action dated September 8, 2009 the Examiner indicated that the 37 CFR 112 rejection was overcome by the amendment, and the amendment was entered.

**(5) SUMMARY OF THE CLAIMED SUBJECT MATTER**

The claimed invention is for a container for displaying items such as live cut flowers, for example, held in the container by a frog in the bottom of the container, where the container can be inserted into and held in the drink holder of a vehicle. The problem is that

water or other liquids placed in the container, to keep the flowers fresh, can splash out when the vehicle moves. Because the flowers are live cut flowers, a closed lid to keep the water from splashing out will also prevent the flower stems from being inserted in the container to absorb the water. Consequently, it is necessary to not only prevent water, to the extent possible, from splashing out but when some water does splash out, to provide a structure that redirects the water back into the container rather than allowing it to splash out of the container. To accomplish these purposes, the container apparatus includes at least two parts: a cup shaped receptacle (22) and a grooved ring (20) press fitted into the opening at the top of the receptacle (22). The grooved ring (20) structure around the edge serves at least three functions. First, it provides a lip type structure so that water inside the receptacle (22) will be prevented, at least for the most part, from splashing out of the receptacle (22) interior. A second function is to catch any water that might inadvertently splash from the receptacle (22) in the upwardly facing groove of the ring (20). However, it is not enough for the ring (20) to simply catch the water, it must have a structure that also redirects the water back into the receptacle (22). To accomplish this function, the grooved ring (20) has an inner wall whose top most edge is closer to the bottom of the receptacle (22) than the adjacent outer edge of the ring. With such a structure, any water splashing from the receptacle (22) will likely be caught in the groove and will thereafter be directed back into the receptacle (22) in response to further movement of the vehicle. The third function of the grooved ring (20) is to provide a region for retaining a small amount of liquid or wax fragrance.

The container may further include a stem support means (e.g., a frog) to support the live cut flowers or plant parts.

Independent claim 1 recites "A container for items, comprising:

a) a receptacle (22) adapted to be received in a motor vehicle drink holder [page 2, lines 3-5], the receptacle (22) comprising:

i) a closed bottom [page 2, line 5],

- ii) a top with an opening [page 2, lines 5-6], and
- iii) a sidewall that connects the bottom and the top [page 2, line 6];

b) support means separate from and contacting the closed bottom for supporting a plant stem inserted into the receptacle (22) [page 2, lines 6-7]; and

c) a grooved ring (20) sized to be press fitted into the opening of the top [page 5, lines 9-10, page 6, lines 4-5, Figures 4, 5], the grooved ring (20) having an outer wall and an inner wall [page 6, lines 6-8, Figures 4-6], the outer wall being adjacent to the sidewall of the receptacle (22) at a first distance above the closed bottom [page 5, line 29 – page 6, line 8], the inner wall being at a second distance above the closed bottom, the second distance being less than the first distance [page 6, lines 6-8, Figure 6]."

Independent claim 8 recites, "A container for items, comprising:

a) a cup-shaped receptacle (22) adapted to be received in a motor vehicle drink holder [page 2, lines 3-5], the receptacle (22) comprising:

- i) a closed bottom [page 2, line 5],
- ii) a top with an opening [page 2, lines 5-6], and
- iii) a sidewall that converges from the top to the bottom [page 2, line

6];

b) a detachable grooved ring (20) positioned in the cup-shaped receptacle (22), the detachable grooved ring (20) sized to be press fitted into the opening of the top [page 5, lines 9-10, page 6, lines 4-5, Figures 4, 5], the detachable grooved ring (20) having an outer wall and an inner wall [page 6, lines 6-8, Figures 4-6], the outer wall being adjacent to the sidewall of the cup-shaped receptacle (22) at a first distance above the closed bottom [page 5, line 29 – page 6, line 8], the inner wall being at a second distance above the closed bottom, the second distance being less than the first distance [page 6, lines 6-8, Figure 6]; and

c) a set of prongs contacting the closed bottom, for supporting a plant stem [page 3, line 25 – page 4, line 6]."

Independent claim 10 recites "A method of displaying a part of a plant, comprising the steps of, in either order:

a) inserting the plant part into a container having a closed bottom, and supporting the plant part with at least one prong mounted on the closed bottom [page 4, lines 15-17], the container adapted to be received in a motor vehicle drink holder [page 6, lines 14-15];

b) providing a grooved ring (20) sized to be press fitted into the container [page 5, lines 9-10, page 6, lines 4-5, Figures 4, 5], the grooved ring (20) having an outer wall and an inner wall [page 6, lines 6-8, Figures 4-6], the outer wall being adjacent to a sidewall of the container at a first distance above the closed bottom [page 5, line 29 – page 6, line 8], the inner wall being at a second distance above the closed bottom, the second distance being less than the first distance [page 6, lines 6-8, Figure 6]; and

c) placing the container into the drink holder [page 6, lines 14-15]."

Independent claim 28 recites "A container for items, comprising:

a receptacle (22) adapted to be received in a motor vehicle drink holder [page 2, lines 3-5], the receptacle (22) comprising:

a closed bottom [page 2, line 5],

a top with an opening [page 2, lines 5-6], and

a sidewall that connects the bottom and the top [page 2, line 6]; and

a ring (20) sized to be press fitted into the opening of the top [page 5, lines 9-10, page 6, lines 4-5, Figures 4, 5], the ring (20) having a groove between an outer wall and an inner wall to hold liquid [page 5, line 29 – page 6, line 3, page 6, lines 6-8, Figures 4-6], the outer wall being adjacent to the sidewall of the receptacle (22) at a first distance above the closed bottom [page 5, line 29 – page 6, line 8], the inner wall being at a second distance above the closed bottom, the second distance being less than the first distance [page 6, lines 6-8, Figure 6]."

**(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

A. First Ground of Rejection - Claims 1-2, 5, 7-9, 12-15, 18 and 22-24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hinrichs (US Pat. No. 627,231) in view of Sakamoto (US Pat. No. 3,477,175), where Hinrichs discloses a stationary flower pot (A) for growing live plants in soil, the soil receiving water through the porous walls of an insert reservoir, and Sakamoto discloses a plant stem support means (i.e., frog) for holding cut flowers in a water filled container.

B. Second Ground of Rejection - Claims 10 and 11 are rejected under 35 U.S.C. § 103(a) as being as being unpatentable over Hinrichs in view of Sakamoto, where, as similarly stated in the First Ground of Rejection, the Examiner suggests the combination of Hinrichs and Sakamoto, a combined structure for growing a live plant in soil with a frog for supporting plant parts in a water filled container, renders Appellant's invention obvious.

C. Third Ground of Rejection – Claims 1, 3, and 12-17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hinrichs in view of Stone (US Pat. No. 2,057,856) where, as similarly stated in the First Ground of Rejection, the Examiner suggests the combination of Hinrichs and Stone, a combined structure for growing a live plant in soil with a frog for supporting plant parts in a water filled container, renders Appellant's invention obvious.

D. Fourth Ground of Rejection – Claims 10 and 11 are rejected over 35 U.S.C. § 103(a) as being unpatentable over Hinrichs in view of Stone, where, as similarly stated in the First Ground of Rejection, the Examiner suggests the combination of Hinrichs and Stone, a combined structure for growing a live plant in soil with a bowl containing a frog for supporting plant parts in a water filled container, renders Appellant's invention obvious.

E. Fifth Ground of Rejection – Claims 19-20 and 25-26 are rejected over 35 U.S.C. § 103(a) as being unpatentable over Hinrichs in view of Sakamoto and further in view of Matthews (US Pat. No. 6,516,563), where the Examiner suggests the combination

of Hinrichs, Sakamoto and Matthews, a combined structure for growing a live plant in soil with a frog for supporting plant parts in a water filled container, and a ring-shaped trough for watering the plant soil, renders Appellant's invention obvious.

F. Sixth Ground for Rejection – Claims 21 and 27 are rejected over 35 U.S.C. § 103(a) as being unpatentable over Hinrichs in view of Sakamoto and further in view of Holtkamp Jr. (US Pat. No. 5,477,640), where the Examiner suggests the combination of Hinrichs, Sakamoto and Matthews, a combined structure for growing a live plant in soil with a frog for supporting plant parts in a water filled container, and a solid cartridge (12) in a U-shaped casing (30) for a fragrance, renders Appellant's invention obvious.

G. Seventh Ground for Rejection – Claims 28 is rejected over 35 U.S.C. § 103(a) as being unpatentable over Hinrichs., where, as discussed above in the First Ground of Rejection, and with respect to claim 1, Hinrichs discloses a stationary flower pot (A) for growing live plants in soil, the soil receiving water through the porous walls of an insert reservoir.

## **(7) ARGUMENT**

The differences between the subject matter sought to be patented and the prior art are such that the claimed invention as a whole would not have been obvious at the time the invention was made to a person having ordinary skill in the art to which such subject matter pertains. (*KSR Int'l Co v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007)).

The question of obviousness is resolved on the basis of underlying factual determinations including (1) determining the scope and content of the prior art, (2) ascertaining the differences between the prior art and the claims at issue, (3) resolving the level of ordinary skill in the pertinent art, and (4) where in evidence, so-called secondary considerations. (*Graham v. John Deere and Co.*, 383 U.S. 1 (1966)).



Discussing the obviousness of claimed combinations of elements of prior art, *KSR* explains:

When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same or a different field. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability.

*KSR*, 127 S. Ct. at 1740. Where the claimed subject matter cannot be fairly characterized as involving “the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement,” a holding of obviousness can be based on a showing that “there was an apparent reason to combine the known elements in the fashion claimed.” *KSR*, 127 S. Ct. at 1740-41. Such a showing requires “some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, 127 S. Ct. at 1741 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

The Examiner, however, has failed to articulate a rational underpinning to support the conclusion of obviousness. The differences between the prior art and the claims at issue are so great as to be irreconcilable.

Contrary to the Examiner's position, the prior art cannot be modified to produce a “predictable variation” resulting in the claimed subject matter. The applied combinations fail to disclose all elements of the rejected claims or the functionality achieved by the claimed structure. Thus, considering the lack of prior art disclosure of all elements of rejected claims, or their functionality, one of ordinary skill in the art would not find these claims obvious according to the applied references under 35 U.S.C. §103, and therefore the rejections should be withdrawn at least for this reason.

A. First Ground of Rejection - Claims 1-2, 5, 7-9, 12-15, 18 and 22-24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hinrichs in view of Sakamoto.

**1. Independent claims 1, 8, 10 and 28**

Independent claims 1, 8, 10 and 28 each stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hinrichs in view of Sakamoto.

The combination of Hinrichs and Sakamoto are insufficient to make obvious the claimed structures, functionality and method of use. Hinrichs' reservoir sidewalls are porous, enabling water to be dispensed by diffusion through the sidewalls and into the soil. Hinrichs' reservoir does not have a lip structure to preventing water in the pot (A) from splashing out because the pot (A) holds moistened soil, not water. Furthermore, being porous, the reservoir is not functionally capable of retaining an aromatic liquid. Hinrichs' flower pot (A), if placed in a motor vehicle container holder, does not solve the problem of splashing water or provide all the functionality of Appellant's receptacle (22) with the grooved ring (20) insert.

Hinrichs' flower pot was not invented for use in a motor vehicle and is not adaptable to be received for use in a motor vehicle drink holder. The first production motorized vehicles appeared about the beginning of the 20<sup>th</sup> Century (e.g., Duryeas (1898), Olds (1901), Ford Model T (1908)), and the first devices intended as cup holders in a moving vehicle received patents beginning in the 1980's. Applicant's flower pot is the first conceived for use in a moving vehicle drink holder, taking into account the tendency of vehicle motion to cause liquid to splash. In Hinrichs there is no motivation or common sense suggestion to adapt the disclosed flower pot to the method of use or structure recited in the independent claims, as will be made clear in the following arguments.

Sakamoto's stem support means (i.e., frog) does not overcome the deficiencies of Hinrichs that render Hinrichs structurally and functionally distinct from Appellant's container. Clearly, since prongs or a frog are used to support plant parts, i.e., not live growing plants, there is no inherent need for soil. It is commonly understood that plant

parts, such as cut flowers are placed in water to keep them fresh, at least temporarily. To the contrary, Hinrichs provides a flower pot (A) for growing plants in soil, and a reservoir insert means for introducing water to nourish the plant by diffusion through a porous wall of the insert.

There is no motivation, suggestion or basis for combining Sakimoto with Hinrichs, as a set of prongs or a frog are not needed to support a plant growing in potted soil, and Hinrichs teaching the diffusion of water into soil from the porous reservoir.

Appellant's container includes a detachable grooved ring (20) fitted into the top of a receptacle (22) for holding a liquid fragrance. Appellant's grooved ring (20) is not porous and retains liquid placed therein. The Hinrichs reservoir does not retain water.

In order to combine Hinrichs and Sakamoto to make Appellant's container obvious, the soil in Hinrichs' flower pot (A) would be replaced with water, and the frog of Sakamoto would be added to the flower pot (A). In such case, Hinrichs' water diffusing reservoir becomes superfluous, and furthermore lacks the structure to provide the splash prevention functionality (i.e., lip) disclosed by Appellant, as discussed below.

Appellant's grooved ring (20) is adapted, to the extent possible, to prevent splashing of water out of the receptacle (22) onto motor vehicle surfaces. Were Hinrichs' flower pot (A) filled with water, counter to its intended use, the water-filled reservoir disclosed by Hinrichs would not, by its structure, prevent such splashing.

The Examiner asserts a correspondence between Hinrichs' reservoir and Appellant's grooved ring (20). Appellant has argued, above, that the claimed container is a different structure, having different functionality, and solving a problem not suggested by Hinrichs. Functional difference between the Appellant's container and Hinrichs' flower pot (A) is demonstrated by the Appellant's grooved ring (20) adapted to

hold aromatic liquids, not to disperse water, and prevent splashing - a method of use not taught or suggested by Hinrichs.

The Office Action (3/10/2009, page 3) states that it would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide walls with heights of a varied degree as claimed, as such is not accorded any particular function or purpose in the original disclosure and such a modification would not provide an inventive concept if none is so described.

To the contrary, the particular function and purpose (i.e., method of use) is presented in the original disclosure. Appellant's grooved ring (20) inner and outer walls have different heights (Figure 6) to prevent liquid – whether it be water from the receptacle (22) or aromatic liquid from the grooved ring (20) - from splashing out of the container during vehicle motion (specification (page 5, lines 9-11): "The grooved ring can be used to hold a substance, such as aromatic wax, and to prevent water from splashing out of the receptacle"). The height of the inner wall, being lower than the outer wall, inherently increases the likelihood of splashed aromatic liquid or water spilling inwardly to the receptacle, and not out of the grooved ring (20) onto the motor vehicle interior. Hinrichs does not disclose a difference in wall height, and the method of use (functionality) cannot be realized by the combination of Hinrichs and Sakamoto. To assert otherwise is impermissible hindsight.

The Examiner has applied *KSR* in arguing that modifying the container of Hinrichs to employ the prongs of Sakamoto would have been obvious in order to support plant stems. Appellant has responded to that argument above.

*In re Rose*, 105 USPQ 237 (CCPA 1995) is invoked to assert that a variability in size of the container or receptacle of Hinrichs is generally recognized as being within the level of ordinary skill in the art, and therefore, the container or receptacle being adapted (in size, according to the Examiner) to be received in a motor vehicle drink

holder is obvious. Appellant argues that sizing the container or receptacle (22) is not an issue related to determining obviousness. Rather, the container (i.e., receptacle (22) and grooved ring (20)) is a structure adapted for a method of use – placement in a moving vehicle drink holder – for which the flower pot (A) of Hinrichs is not adapted.

The Examiner does not cite case law to argue the obviousness of modifying the Hinrichs reservoir for containing an aromatic liquid. In such case, modifying the Hinrichs reservoir requires that it cannot be porous, which is contrary to the teachings of Hinrichs. Otherwise, the aromatic liquid would diffuse into the plant soil, which is contrary to the function of Appellant's grooved ring (20).

For the reasons presented above, Appellant argues that one of ordinary skill in the art would recognize that independent claims 1, 8, 10 and 28, together with their dependent claims 2, 5, 7, 9, 12-15, 18, and 22-24 distinguish from the combination of Hinrichs and Sakamoto references and are not found obvious over the cited references.

B. Second Ground of Rejection - Claims 10 and 11 are rejected under 35 U.S.C. § 103(a) as being as being unpatentable over Hinrichs in view of Sakamoto.

Claims 10 and 11 depend from independent claim 8, and are therefore patentable over the cited references for at least the same reasons argued above for claim 8.

C. Third Ground of Rejection – Claims 1, 3, and 12-17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Hinrichs in view of Stone.

Claim 3 and 12-17 depend from claim 1. Stone discloses a flower holder (e.g., "frog"). As with Sakamoto, there is no motivation to combine the soil-filled flower pot (A) of Hinrichs with Stone's frog. Stone fails to cure the deficiencies of Hinrichs with respect to independent claim 1, as argued above. Therefore claims 3 and 12-17 are patentable over the cited references for at least the same reasons as given above for claim 1.

D. Fourth Ground of Rejection – Claims 10 and 11 are rejected over 35 U.S.C. § 103(a) as being unpatentable over Hinrichs in view of Stone.

Claims 11 depends from claim 10. Claim 10 recites a method of display not taught or suggested by Hinrichs or Stone. As argued above, like Sakamoto, there is no motivation to combine the bowl/frog combination of Stone with a soil-filled pot (A) as disclosed by Hinrichs. Therefore claims 10 and 11 are patentable over the cited references for at least the same reasons as given above for claim 10 in traversing the first ground of rejection.

E. Fifth Ground of Rejection – Claims 19-20 and 25-26 are rejected over 35 U.S.C. § 103(a) as being unpatentable over Hinrichs in view of Sakamoto and further in view of Matthews.

Claims 19-20 depend from claim 1. Claims 25-26 depend from claim 8. According to the Examiner, both Hinrichs and Matthews disclose a detachable reservoir or ring-shaped trough (24) to provide water or nutrients for a growing plant in a soil-filled pot. Appellant's grooved ring (20), which holds an amount of liquid fragrance, is not adapted to transfer the liquid, but serves a different function – holding liquid fragrance.

There is no motivation to combine the prongs of Sakamoto with the ring-shaped trough (24) of Matthews, and/or the Hinrichs reservoir, because the prongs of Sakamoto are operable with flower or plant stems, whereas the flower pots of both Matthews and Hinrichs are operable with soil-potted growing plants. Matthews' ring-shaped trough (24) does not cure the deficiencies of Hinrichs and Sakamoto with respect to claims 1 and 8. Therefore claims 19-20 and 25-26 are also patentable over the cited references for at least the same reasons as given above for claims 1 and 8.

F. Sixth Ground for Rejection – Claims 21 and 27 are rejected over 35 U.S.C. § 103(a) as being unpatentable over Hinrichs in view of Sakamoto and further in view of Holtkamp Jr.

Claim 21 depends from claim 1. Claim 27 depends from claim 8. Holtkamp discloses a solid fragrance cartridge (12) in a U-shaped casing (30) installed between an upper cap 14 and a flat portion 22 of a vase for a fragrance emitting plant watering system. Neither the cartridge (12) or the U-shaped casing (30) are adapted to hold a liquid like the grooved ring (20). The cartridge 12 lacks the structure recited in claims 1 and 8, and has no splash preventing structure, function, or capability. Holtkamp thus fails to cure the deficiencies of Hinrichs and Sakamoto with respect to claims 1 and 8. Therefore claims 21 and 27 are patentable over the cited references for at least the same reasons as given above for claims 1 and 8.

G. Seventh Ground for Rejection – Claims 28 is rejected over 35 U.S.C. § 103(a) as being unpatentable over Hinrichs.

The arguments presented in reply to the first grounds for rejection, with respect to claim 28, apart from the discussion of Sakamoto, apply here as well.

The Examiner has applied *In re Hutchinson*, 69 USPQ 139 to assert that a variability in size of the container or flower pot (A) of Hinrichs to adapt it to fit in a motor vehicle holder is not a limitation in any patentable sense. The Examiner invokes *KSR* to argue that when the solution to a market need (not stated by the Examiner, but the context is that of varying the container size to fit the cup holder) arises "and there are a finite number of identified, predictable solutions, a person of ordinary skill has a good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product is not of innovation but ordinary skill and common sense. In that instance, the fact that a combination was obvious to try might show it was obvious under 35 U.S.C. 103." *In re Rose*, 105 USPQ 237 (CCPA 1995) is invoked to assert that a variability in size of the container or receptacle of Hinrichs is generally recognized as being within the level of ordinary skill in the art, and therefore, the container or receptacle being adapted (in size, according to the Examiner) to be received in a motor vehicle drink holder is obvious.

However, asserting mere size as the basis of obviousness is incorrect. Appellant's container is adapted with structures for functional use in a manner not disclosed or suggested by Hinrichs, regardless of size – holding a liquid fragrance and preventing splashing when placed in a moving vehicle.

The Examiner has failed to articulate a rational underpinning to support the conclusion of obviousness. The structure is different from that disclosed by Hinrichs in order to serve a distinctly different function from that taught by Hinrichs.

For the reasons presented above, Appellant argues that one of ordinary skill in the art would recognize that independent claim 28 is distinguished from the teachings of the Hinrichs reference and is not found obvious over the cited reference.



### CONCLUSION

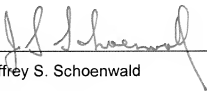
Claims 1-3, 5, and 7-28 are allowable and are not properly rejected under 35 U.S.C. § 103(a) as being obvious over the cited references, individually, or in the combinations cited.

The scope and content of the prior art are significantly distinct from the claimed limitations. Specifically, the detailed structure is distinguished from the cited references, and the Examiner has not shown motivation to modify the structures of the cited combination of references to render the claims obvious.

Thus, Appellant respectfully submits that each and every pending claim of the present application meets the requirement for patentability under 35 U.S.C. 103(a), and that the present application and each pending claim are allowable over the prior art of record.

Respectfully submitted,

Dated: November 04, 2009

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**(8) CLAIMS APPENDIX**

1. (currently amended) A container for items, comprising:

a) a receptacle adapted to be received in a motor vehicle drink holder, the receptacle comprising:

- i) a closed bottom,
- ii) a top with an opening, and
- iii) a sidewall that connects the bottom and the top;

b) support means separate from and contacting the closed bottom for supporting a plant stem inserted into the receptacle; and

c) a grooved ring sized to be press fitted into the opening of the top, the grooved ring having an outer wall and an inner wall, the outer wall being adjacent to the sidewall of the receptacle at a first distance above the closed bottom, the inner wall being at a second distance above the closed bottom, the second distance being less than the first distance.

2. (original) The container of claim 1 wherein the support means is a set of prongs.

3. (original) The container of claim 1 wherein the support means is a frog.

4. (canceled)

5. (previously presented) The container of claim 1 wherein the grooved ring is detachable.

6. (canceled)

7. (original) The container of claim 1, the container configured to stand on its own independent of the drink holder.

8. (previously presented) A container for items, comprising:

a) a cup-shaped receptacle adapted to be received in a motor vehicle drink

holder, the receptacle comprising:

- i) a closed bottom,
- ii) a top with an opening, and
- iii) a sidewall that converges from the top to the bottom;

b) a detachable grooved ring positioned in the cup-shaped receptacle, the detachable grooved ring sized to be press fitted into the opening of the top, the detachable grooved ring having an outer wall and an inner wall, the outer wall being adjacent to the sidewall of the cup-shaped receptacle at a first distance above the closed bottom, the inner wall being at a second distance above the closed bottom, the second distance being less than the first distance; and

c) a set of prongs contacting the closed bottom, for supporting a plant stem.

9. (previously presented) The container of claim 8 wherein the closed bottom and the top are generally circular.

10. (previously presented) A method of displaying a part of a plant, comprising the steps of, in either order:

a) inserting the plant part into a container having a closed bottom, and supporting the plant part with at least one prong mounted on the closed bottom, the container adapted to be received in a motor vehicle drink holder;

b) providing a grooved ring sized to be press fitted into the container, the grooved ring having an outer wall and an inner wall, the outer wall being adjacent to a sidewall of the container at a first distance above the closed bottom, the inner wall being at a second distance above the closed bottom, the second distance being less than the first distance; and

c) placing the container into the drink holder.

11. (original) The method of claim 10, further comprising after steps a) and b), the step of removing the container with the plant part from the drink holder to display the plant part outside the motor vehicle.

12. (previously presented) The container of claim 1, wherein the support means is permanently connected to the closed bottom.
13. (previously presented) The container of claim 1, wherein the support means is removably connected to the closed bottom.
14. (previously presented) The container of claim 2, wherein the set of prongs is permanently connected to the closed bottom.
15. (previously presented) The container of claim 2, wherein the set of prongs is removably connected to the closed bottom.
16. (previously presented) The container of claim 3, wherein the frog is permanently connected to the closed bottom.
17. (previously presented) The container of claim 3, wherein the frog is removably connected to the closed bottom.
18. (previously presented) The container of claim 1, wherein the grooved ring extends completely around the receptacle.
19. (previously presented) The container of claim 1, wherein the grooved ring extends partially around the receptacle.
20. (previously presented) The container of claim 1, wherein the grooved ring is discontinuous, having two or more channel elements.
21. (previously presented) The container of claim 1, wherein the grooved ring contains one of an air freshener and a deodorizer.
22. (previously presented) The container of claim 8, wherein the set of prongs is permanently connected to the closed bottom.

23. (previously presented) The container of claim 8, wherein the set of prongs is removably connected to the closed bottom.
24. (previously presented) The container of claim 9, wherein the grooved ring extends completely around the receptacle.
25. (previously presented) The container of claim 9, wherein the grooved ring extends partially around the receptacle.
26. (previously presented) The container of claim 9, wherein the grooved ring is discontinuous, having two or more channel elements.
27. (previously presented) The container of claim 9, wherein the grooved ring contains one of an air freshener and a deodorizer.
28. (previously presented) A container for items, comprising:  
a receptacle adapted to be received in a motor vehicle drink holder, the receptacle comprising:  
a closed bottom,  
a top with an opening, and  
a sidewall that connects the bottom and the top; and  
a ring sized to be press fitted into the opening of the top, the ring having a groove between an outer wall and an inner wall to hold liquid, the outer wall being adjacent to the sidewall of the receptacle at a first distance above the closed bottom, the inner wall being at a second distance above the closed bottom, the second distance being less than the first distance.

**(9) EVIDENCE APPENDIX**

None.

**(10) RELATED PROCEEDINGS APPENDIX**

None.